

Appln. No. 09/480,643  
Amdt. dated Jan. 31, 2005  
Reply to Final Office Action dated Nov. 30, 2004

### **Remarks/Arguments**

These remarks are in response to the Final Office Action dated November 30, 2004 (Office Action). As this reply is timely filed, no fee is believed due. Accompanying this reply, please find an executed Power of Attorney and Correspondence Address Indication Form as well as an executed Statement Under 37 CFR 3.73(b) from Lynn D. Anderson.

In the Office Action, claims 1, 3-6, 9, 10, and 14-21 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,317,718 to Fano (Fano) in view of U.S. Patent No. 6,647,373 to Carlton-Foss (Carlton-Foss).

Claims 1, 3, 9, 10, 14, 15, 17, 19, and 21 have been amended to clarify that the present invention utilizes a short range wireless communication protocol and system. The amendments also clarify that communications between merchants can be relayed through the wireless communication device, rather through a centralized server and/or system. Further, communications can be sent directly between the mobile wireless device and merchants and/or merchant systems. Claim 4 has been canceled. Support for these amendments can be found at page 20 and in Fig. 7 of the Applicants' specification. Accordingly, no new matter has been introduced.

Prior to addressing the rejections on the art, a brief review of the Applicants' invention is appropriate. The Applicants' invention relates to a method and system for facilitating commercial transactions through the use of a mobile wireless device. In accordance with the present invention, a mobile wireless device associated with a user can store preferences and desired transactions for the user. As the user walks through a commercial environment, such as a shopping mall or the like, the mobile wireless device of the user can communicate with individual merchant systems in order to facilitate a commercial transaction. In one embodiment of the present invention, the mobile wireless device can communicate directly with merchant systems over short range wireless communication links. In such an embodiment, no centralized transmitter and/or server is required as the communications can operate on an ad-hoc, peer-to-peer basis within a limited geographic area.

Turning to the rejections on the art, claims 1, 3-6, 9, 10 and 14-21 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Fano in view of Carlton-

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Foss. Fano has been cited for teaching all aspects of the Applicants' claimed invention with the exception of the features of "transmitting information on said first bid to a second merchant" and using a cellular telephone as the wireless device. Carlton-Foss has been cited for a competitive bidding process. In consequence, the Office Action states that it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the system of Fano with a competitive bidding process as shown in Carlton-Foss.

The Office Action further notes that different types of wireless communication systems, i.e. Bluetooth, Wi-Fi, or cellular, are functional equivalents. Accordingly, it is asserted that it would have been obvious for one having ordinary skill in the art to select any desirable wireless system to be employed by Carlton-Foss.

The Applicants respectfully disagree. As amended, neither Fano, Carlton-Foss, nor any combination thereof teaches or suggests the present invention as claimed. Further, the selection of a particular wireless system has a significant impact upon the way in which the invention and the cited art function, making particular features of the Applicants' invention impractical or impossible for Fano or Carlton-Foss to perform.

The claims of the present invention now recite that communications can be sent and/or received directly between merchants and the mobile wireless device. Further, it is recited that such communications are sent over a short range wireless communication link in a local area. Accordingly, no centralized transmitter or intermediary is required to relay messages between the wireless device and the merchants. Communications between the mobile wireless device and merchant systems can be sent directly without the aid of a centralized transmitter and/or server system. Both Fano and Carlton-Foss teach away from these concepts.

In contrast to the Applicants' invention, Fano does not support communications directly between merchants and the mobile wireless device. At column 47, lines 23-26, Fano states that "[o]ne advantage of the system is that it enables the retrieval of data for nearby stores without relying on the presence of any special equipment at the mall itself." With this statement in mind, one can only assume that the PDA of Fano is communicating over a long range communication network with a remote system which is not "on premises" at any of the stores in the local area surrounding the user. To

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communicate over a short range wireless communication network, such equipment would be necessary. Accordingly, Fano fails to teach or suggest, and in fact teaches away from, individual merchants having means for communicating over a short range wireless communications network directly with the mobile wireless device. As such, Fano cannot support communications exchanged directly between the mobile wireless device and the merchants as recited in the Applicants' claims.

In further support of the notion that Fano utilizes a centralized processing system, at column 33, lines 7-19, Fano states the following:

FIG. 17 presents the detailed logic associated with the many different methods for accessing this centrally stored profile. The profile database 1710 is the central storage place for the users' profile information. The profile gateway server 1720 receives all requests for profile information, whether from the user himself or merchants trying to provide a service to the user. The profile gateway server is responsible for ensuring that information is only given out when the profile owner specifically grants permission. Any device that can access the public Internet 1730 over TCP/IP (a standard network communications protocol) is able to request information from the profile database via intelligent HTTP requests. (emphasis added)

It is clear from the above passage that Fano utilizes a centralized management system. By comparison, the present invention utilizes a peer-to-peer type of ad-hoc network supporting direct communications between the mobile wireless device and the merchants. Moreover, in the present invention, decisions can be made within the mobile wireless device rather than within a centralized server or management system.

Further differentiating the present invention from that of Fano is that Fano relies upon Global Positioning System (GPS) technology to determine location information for a user and to identify surrounding stores. GPS technology teaches away from the present invention and its use of short range wireless communications. In particular, GPS is used by Fano because the Fano communications network covers a large, geographically diverse area. Fano works in such an environment and, thus, must restrict the pool of participant merchants through the use of GPS technology.

In contrast, the present invention can utilize the inherent nature of short range wireless communications to limit the geographic scope of merchants available for

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commercial transactions. The use of short range wireless communication links and/or networks relieves the present invention from having to actively locate users. That is, when the mobile wireless device is in range, it can join a network in an ad-hoc fashion. No affirmative steps need be taken to locate the mobile wireless device or to filter out responses from merchants that are not within the local area surrounding the mobile wireless device.

Turning to the second reference, Carlton-Foss fails to cure the deficiencies of Fano. First, Carlton-Foss does not teach or suggest a system where communications are sent directly between a mobile wireless device and merchants. Rather, Carlton-Foss, like Fano, uses a centralized host processing system. (Column 3, lines 43-46)

Second, rather than limiting the geographic area of the reverse auction, Carlton-Foss seeks to expand the area. At column 4, lines 8-13, Carlton-Foss states "[b]ecause this electronic system reaches a geographically diverse audience, requests become visible in areas where they are not ordinarily available for suppliers to notice them and respond to a request, resulting in increased supplier response without significant increase in purchasing costs." At multiple locations within the Carlton-Foss specification, the Internet is suggested as a medium of communication. Again, Carlton-Foss is concerned with expanding the geographic scope in which users and merchants can participate to enlarge the pool of potential bidders. This expansive approach teaches away from the present invention, which seeks to limit the geographic area from which merchants can participate.

Further, as the stated goal of Carlton-Foss is a geographically diverse audience, the use of short range wireless communication links as a means of communication between the bidders and seller would be impractical as such means generally would limit the geographic area in which messages can be sent or received.

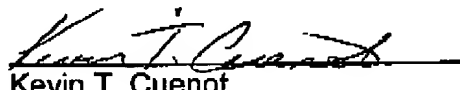
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As neither Fano, Carlton-Foss, nor any combination thereof teaches or suggests the present invention as claimed, withdrawal of the 35 U.S.C. § 103(a) rejection with respect to claims 1, 3, 5-6, 9, 10, and 14-21 is respectfully requested. The Applicants believe all claims to be in condition for allowance, which action is respectfully requested. The Applicants invite the Examiner to call the undersigned if it is believed that a telephonic interview would expedite prosecution of the application to an allowance.

Respectfully submitted,

1/31/05  
Date

  
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